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PATENT
Attorney Docket No.: 026549-000100US
Client Ref. No.: 30836

TOWNSEND and TOWNSEND and CREW LLP

By: 

Jo Ann Honcik Dallara

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Ronit Eisenberg
Raz Tamar

Application No.: 10/009,809

Filed: April 26, 2002

For: CELL PENETRATING ANTI-
ALLERGIC PEPTIDES

Customer No.: 20350

Confirmation No. 1519

Examiner: Crowder, Chun

Technology Center/Art Unit: 1644

RESPONSE TO NOTIFICATION OF
NON-COMPLIANT APPEAL BRIEF

Mail Stop BPAI
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:


In response to the Notification of Non-Complaint Appeal Brief mailed October 20, 2008, for the above-referenced application, and in accordance with the telephone conversation of November 6, 2008, with the Patent Appeal Center Specialist, Lashawn Hinton, applicants submit herewith a corrected copy of page 6 of the Substitute Appeal Brief filed electronically on September 25, 2008.

The substitute page 6 corrects Section 6, Grounds of Rejection, as suggested by Ms. Hinton.

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Response to Notification of
Non-Complaint Appeal Brief dated Oct. 20, 2008
Response dated Nov. 20, 2008
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Applicants apologize for the inconvenience to the Office. It is requested that the instant substitute page 6 be considered as part of the Substitute Appeal Brief filed September 25, 2008.

Respectfully submitted,


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6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. The Examiner rejects the pending claims 63, 66-79 and 72-79 as obvious (35 U.S.C. §103) over Holgate *et al.* (British Med. Bull. 1992, 481:40-50) in view of Aridor, (Science, 1993, 262:1569-1572) and Lin (U.S. Pat. No. 5,807,746). Holgate is relied upon as generally teaching that pharmacological agents can inhibit mast cell degranulation and these agents are useful for treating diseases such as asthma. Aridor teaches Seq. No. 1 (KNNLKECGLY) and Seq. No. 2 (KENLKDCGLF). Lin teaches, Seq. ID No. 3, the Kaposi Fibroblast Growth Factor CPP (AAVALLPAVLLALLAP).

Dependent claims 64 and 65 reciting specific modifications are rejected as obvious over Holgate in view of Aridor and Lin in view of Avruch and Jackson. Avruch and Jackson recite modifications analogous to the those of dependent claims 64 and 65.

The Examiner presents the *prima facie* case of obviousness by arguing that she has identified the salient elements of the claims, a motivation to combine the elements, and a reasonable expectation that once combined, the recited elements would function to inhibit histamine release by mast cells. Appellants request that claims 64 and 65 be considered jointly with the independent claims.

7. ARGUMENT

Appellants submit that the *prima facie* case of obviousness is not properly set forth. The Examiner's presumption that the art is sufficiently predictable to provide one of skill with a reasonable expectation of success is wrong. In contrast to the Examiner's unsupported position, experimental evidence clearly indicates that most fusions of CPP with mast cell inhibitors do not